

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

BENJAMIN B. BROCKIE,

NO. C11-5516-BHS/KLS

Petitioner,

REPORT AND RECOMMENDATION

Noted For: October 18, 2013

PAT GLEBE,

Respondent.

Mr. Brockie filed his habeas petition on July 5, 2011 while simultaneously petitioning this court to stay and abey his habeas petition pending adjudication of at least one of his claims in Washington state court. ECF No. 11. The Court denied the motion to stay, but granted the motion to delay submission of briefing. ECF No. 29. Petitioner states that his petition has been briefed and argued, but remains pending before the Washington Supreme Court. ECF No. 44, p. 2. He asks that the Court allow him to withdraw his petition without prejudice to allow him to re-file his petition after his claims have been fully exhausted. *Id.*, at 3. Respondent is not opposed to Petitioner's motion. ECF No. 45.

CONCLUSION

Based on the foregoing, the Court recommends that Mr. Brockie's motion to withdraw his habeas petition (ECF No. 44) be **granted and the petition dismissed without prejudice.**

Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have fourteen (14) days from service of this Report and Recommendation to file written objections. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985).

1 Accommodating the time limit imposed by Rule 72(b), the Clerk is directed to set the matter
2 for consideration on **October 18, 2013**, as noted in the caption.
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5 **DATED** this 3rd day of October, 2013.
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Karen L. Strombom
United States Magistrate Judge